

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**KATHLEEN SUSAN HERING, a.k.a.
KATHLEEN S. HERING WESTERVELT
268 Carriage Lane
Auburn, CA 95603
Registered Nurse License No. RN 323038
Nurse Practitioner Certificate No. 2850
Nurse Practitioner Furnishing Certificate No. 2850**

Respondent.

Case No. 2007-311

OAH No. N2007070524

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 14, 2008.

It is so ORDERED December 14, 2007.



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 KIM M. SETTLES, State Bar No. 116945
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8 Attorneys for Complainant
9

10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 *In the Matter of the Accusation Against:*

14 **KATHLEEN SUSAN HERING, a.k.a.**
KATHLEEN S. HERING WESTERVELT
268 Carriage Lane
15 Auburn, CA 95603
Registered Nurse License No. RN 323038
16 Nurse Practitioner Certificate No. 2850
Nurse Practitioner Furnishing Certificate No. 2850
17

18 Respondent.

Case No. 2007-311

OAH No. N2007070524

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
21 above-entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
24 the Board of Registered Nursing. She brought this action solely in her official capacity and is
25 represented in this matter by Edmund G. Brown, Jr., Attorney General of the State of California,
26 by Kim M. Settles, Deputy Attorney General.

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2. Respondent KATHLEEN SUSAN HERING, a.k.a. KATHLEEN S. HERING WESTERVELT (Respondent) is represented in this proceeding by Ellen Mendelson, Esq., whose address is 533 Bella Vista Way, First Floor, San Francisco, CA 94127-0815.

3. On or about November 30, 1980, the Board of Registered Nursing issued Registered Nurse License No. 323038 to KATHLEEN SUSAN HERING, a.k.a. KATHLEEN S. HERING WESTERVELT (Respondent). The license will expire on June 30, 2008, unless renewed.

4. On May 22, 1986, the Board issued Nurse Practitioner Certificate No. 2850 to Respondent. The License will expire on June 30, 2008, unless renewed.

5. On November 21, 1989, the Board issued Nurse Practitioner Furnishing Certificate No. 2850 to Respondent. The License will expire on June 30, 2008, unless renewed.

JURISDICTION

6. Accusation No. 2007-311 was filed before the Board of Registered Nursing, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 23, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2007-311 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 2007-311. Respondent has also carefully read, discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the

1 California Administrative Procedure Act and other applicable laws.

2 9. Respondent voluntarily, knowingly, and intelligently waives and gives up
3 each and every right set forth above.

4 **CULPABILITY**

5 10. Respondent admits the truth of each and every charge and allegation in
6 Accusation No. 2007-311, and stipulates that cause for discipline exists, as set forth in the
7 Accusation.

8 11. Respondent agrees that her Registered Nurse License is subject to
9 discipline and she agrees to be bound by the Board of Registered Nursing's imposition of
10 discipline as set forth in the Disciplinary Order below.

11 12. Respondent agrees that her Nurse Practitioner Certificate is subject to
12 discipline and she agrees to be bound by the Board of Registered Nursing's imposition of
13 discipline as set forth in the Disciplinary Order below.

14 13. Respondent agrees that her Nurse Practitioner Furnishing Certificate is
15 subject to discipline and she agrees to be bound by the Board of Registered Nursing's imposition
16 of discipline as set forth in the Disciplinary Order below.

17 **CONTINGENCY**

18 14. The parties hereto acknowledge that this Stipulated Settlement constitutes
19 an offer in settlement to the Board of Registered Nursing and is not effective until adoption by
20 said agency.

21 15. The parties hereto stipulate that in the event this Stipulated Settlement is
22 not adopted by the Board of Registered Nursing, nothing herein recited shall be construed as a
23 waiver of respondent's right to a hearing or as an admission of the truth of any of the matters
24 charged in the accusation, and the Board shall not be disqualified from further action by having
25 considered this matter. By signing the stipulation, respondent understands and agrees that she
26 may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board
27 considers and acts upon it.

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1 16. The parties understand and agree that facsimile copies of this Stipulated
2 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
3 force and effect as the originals.

4 17. In consideration of the foregoing admissions and stipulations, the parties
5 agree that the Board of Registered Nursing may, without further notice or formal proceeding,
6 issue and enter the following Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Registered Nurse License No. 323038, Nurse
9 Practitioner Certificate No. 2850, and Nurse Practitioner Furnishing Certificate No. 2850 issued
10 to Respondent KATHLEEN SUSAN HERING, a.k.a. KATHLEEN S. HERING WESTERVELT
11 are each revoked. However, the revocation is stayed and Respondent is placed on probation for
12 three (3) years on the following terms and conditions.

13 **Severability Clause.** Each condition of probation contained herein is a separate
14 and distinct condition. If any condition of this Order, or any application thereof, is declared
15 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
16 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
17 and enforceable to the fullest extent permitted by law.

18 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
19 A full and detailed account of any and all violations of law shall be reported by Respondent to
20 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
21 compliance with this condition, Respondent shall submit completed fingerprint forms and
22 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
23 as part of the licensure application process.

24 **Criminal Court Orders:** If Respondent is under criminal court orders, including
25 probation or parole, and the order is violated, this shall be deemed a violation of these probation
26 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

27 2. **Comply with the Board's Probation Program.** Respondent shall fully
28 comply with the conditions of the Probation Program established by the Board and cooperate

1 with representatives of the Board in its monitoring and investigation of the Respondent's
2 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
3 within no more than 15 days of any address change and shall at all times maintain an active,
4 current license status with the Board, including during any period of suspension.

5 Upon successful completion of probation, Respondent's license shall be fully
6 restored.

7 **3. Report in Person.** Respondent, during the period of probation, shall
8 appear in person at interviews/meetings as directed by the Board or its designated
9 representatives.

10 **4. Residency, Practice, or Licensure Outside of State.** Periods of
11 residency or practice as a registered nurse outside of California shall not apply toward a reduction
12 of this probation time period. Respondent's probation is tolled, if and when she resides outside
13 of California. Respondent must provide written notice to the Board within 15 days of any change
14 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
15 returning to practice in this state.

16 Respondent shall provide a list of all states and territories where she has ever been
17 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
18 provide information regarding the status of each license and any changes in such license status
19 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
20 new nursing license during the term of probation.

21 **5. Submit Written Reports.** Respondent, during the period of probation,
22 shall submit or cause to be submitted such written reports/declarations and verification of actions
23 under penalty of perjury, as required by the Board. These reports/declarations shall contain
24 statements relative to Respondent's compliance with all the conditions of the Board's Probation
25 Program. Respondent shall immediately execute all release of information forms as may be
26 required by the Board or its representatives.

27 Respondent shall provide a copy of this Decision to the nursing regulatory agency
28 in every state and territory in which she has a registered nurse license.

1 6. **Function as a Registered Nurse.** Respondent, during the period of
2 probation, shall engage in the practice of registered nursing in California for a minimum of 24
3 hours per week for 6 consecutive months or as determined by the Board.

4 For purposes of compliance with the section, "engage in the practice of registered
5 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
6 work in any non-direct patient care position that requires licensure as a registered nurse.

7 The Board may require that advanced practice nurses engage in advanced practice
8 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
9 Board.

10 If Respondent has not complied with this condition during the probationary term,
11 and Respondent has presented sufficient documentation of her good faith efforts to comply with
12 this condition, and if no other conditions have been violated, the Board, in its discretion, may
13 grant an extension of Respondent's probation period up to one year without further hearing in
14 order to comply with this condition. During the one year extension, all original conditions of
15 probation shall apply.

16 7. **Employment Approval and Reporting Requirements.** Respondent
17 shall obtain prior approval from the Board before commencing or continuing any employment,
18 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
19 performance evaluations and other employment related reports as a registered nurse upon request
20 of the Board.

21 Respondent shall provide a copy of this Decision to her employer and immediate
22 supervisors prior to commencement of any nursing or other health care related employment.

23 In addition to the above, Respondent shall notify the Board in writing within
24 seventy-two (72) hours after she obtains any nursing or other health care related employment.
25 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
26 terminated or separated, regardless of cause, from any nursing, or other health care related
27 employment with a full explanation of the circumstances surrounding the termination or
28 separation.

1 8. **Supervision.** Respondent shall obtain prior approval from the Board
2 regarding Respondent's level of supervision and/or collaboration before commencing or
3 continuing any employment as a registered nurse, or education and training that includes patient
4 care.

5 Respondent shall practice only under the direct supervision of a registered nurse
6 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
7 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
8 are approved.

9 Respondent's level of supervision and/or collaboration may include, but is not
10 limited to the following:

11 (a) Maximum - The individual providing supervision and/or collaboration is
12 present in the patient care area or in any other work setting at all times.

13 (b) Moderate - The individual providing supervision and/or collaboration is in
14 the patient care unit or in any other work setting at least half the hours Respondent works.

15 (c) Minimum - The individual providing supervision and/or collaboration has
16 person-to-person communication with Respondent at least twice during each shift worked.

17 (d) Home Health Care - If Respondent is approved to work in the home health
18 care setting, the individual providing supervision and/or collaboration shall have person-to-
19 person communication with Respondent as required by the Board each work day. Respondent
20 shall maintain telephone or other telecommunication contact with the individual providing
21 supervision and/or collaboration as required by the Board during each work day. The individual
22 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
23 site visits to patients' homes visited by Respondent with or without Respondent present.

24 9. **Employment Limitations.** Respondent shall not work for a nurse's
25 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
26 traveling nurse, or for an in-house nursing pool.

27 Respondent shall not work for a licensed home health agency as a visiting nurse
28 unless the registered nursing supervision and other protections for home visits have been

1 approved by the Board. Respondent shall not work in any other registered nursing occupation
2 where home visits are required.

3 Respondent shall not work in any health care setting as a supervisor of registered
4 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
5 nurses and/or unlicensed assistive personnel on a case-by-case basis.

6 Respondent shall not work as a faculty member in an approved school of nursing
7 or as an instructor in a Board approved continuing education program.

8 Respondent shall work only on a regularly assigned, identified and predetermined
9 worksite(s) and shall not work in a float capacity.

10 If Respondent is working or intends to work in excess of 40 hours per week, the
11 Board may request documentation to determine whether there should be restrictions on the hours
12 of work.

13 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
14 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
15 than six months prior to the end of her probationary term.

16 Respondent shall obtain prior approval from the Board before enrolling in the
17 course(s). Respondent shall submit to the Board the original transcripts or certificates of
18 completion for the above required course(s). The Board shall return the original documents to
19 Respondent after photocopying them for its records.

20 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
21 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
22 amount of \$2,500.00. Respondent shall be permitted to pay these costs in a payment plan
23 approved by the Board, with payments to be completed no later than three months prior to the
24 end of the probation term.

25 If Respondent has not complied with this condition during the probationary term,
26 and Respondent has presented sufficient documentation of her good faith efforts to comply with
27 this condition, and if no other conditions have been violated, the Board, in its discretion, may
28 grant an extension of Respondent's probation period up to one year without further hearing in

1 order to comply with this condition. During the one year extension, all original conditions of
2 probation will apply.

3 **12. Violation of Probation.** If Respondent violates the conditions of her
4 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
5 aside the stay order and impose the stayed revocation of Respondent's license.

6 If during the period of probation, an accusation or petition to revoke probation has
7 been filed against Respondent's license or the Attorney General's Office has been requested to
8 prepare an accusation or petition to revoke probation against Respondent's license, the
9 probationary period shall automatically be extended and shall not expire until the accusation or
10 petition has been acted upon by the Board.

11 **13. License Surrender.** During Respondent's term of probation, if she ceases
12 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
13 probation, Respondent may surrender her license to the Board. The Board reserves the right to
14 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
15 take any other action deemed appropriate and reasonable under the circumstances, without
16 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
17 will no longer be subject to the conditions of probation.

18 Surrender of Respondent's license shall be considered a disciplinary action and
19 shall become a part of Respondent's license history with the Board. A registered nurse whose
20 license has been surrendered may petition the Board for reinstatement no sooner than the
21 following minimum periods from the effective date of the disciplinary decision:

22 (1) Two years for reinstatement of a license that was surrendered for any
23 reason other than a mental or physical illness; or

24 (2) One year for a license surrendered for a mental or physical illness.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ellen Mendelson. I understand the stipulation and the effect it will have on my Registered Nurse License, Nurse Practitioner Certificate, and Nurse Practitioner Furnishing Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 9/28/07


KATHLEEN SUSAN HERING
Respondent

I have read and fully discussed with Respondent Kathleen Susan Hering, the terms and conditions and other matters contained in this Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/1/07


ELLEN MENDELSON
Attorney for Respondent

KH 9/28/07

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing.

DATED: 10/1/07

EDMUND G. BROWN JR., Attorney General
of the State of California

WILBERT E. BENNETT
Supervising Deputy Attorney General

Kim M. Settles
KIM M. SETTLES
Deputy Attorney General

Attorneys for Complaint

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KH 9/28/07

Exhibit A
Accusation No. 2007-311

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 KIM M. SETTLES, State Bar No. 116945
Deputy Attorney General
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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2007-311

14 **KATHLEEN SUSAN HERING, a.k.a.**
15 **KATHLEEN S. HERING WESTERVELT**
268 Carriage Lane
Auburn, CA 95603
16 Registered Nurse License No. RN 323038
Nurse Practitioner Certificate No. 2850
17 Nurse Practitioner Furnishing Certificate No. 2850

ACCUSATION

18 Respondent.
19

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is
24 represented in this matter by Edmund G. Brown Jr, Attorney General of the State of California,
25 by Kim M. Settles, Deputy Attorney General.

26 2. On or about November 30, 1980, the Board of Registered Nursing
27 ("Board") issued Registered Nurse License No. 323038 to KATHLEEN SUSAN HERING, a.k.a.
28 KATHLEEN S. HERING WESTERVELT ("Respondent"). The License will expire on June 30,

1 2008, unless renewed.

2 3. On May 22, 1986, the Board issued Nurse Practitioner Certificate
3 No. 2850 to Respondent. The License will expire on June 30, 2008, unless renewed.

4 4. On November 21, 1989, the Board issued Nurse Practitioner Furnishing
5 Certificate No. 2850 to Respondent. The License will expire on June 30, 2008, unless renewed.

6 **JURISDICTION**

7 5. This Accusation is brought before the Board of Registered Nursing,
8 Department of Consumer Affairs, under the authority of the following laws. All section
9 references are to the Business and Professions Code unless otherwise indicated.

10 6. Section 2750 of the Code provides, in pertinent part, that the Board may
11 discipline any licensee, including a licensee holding a temporary or an inactive licence for any
12 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

13 7. Section 2761 of the Code states:

14 "The Board may take disciplinary action against a certified or licensed nurse of
15 deny an application for a certificate or license for any of the following:

16 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

17 "(1) Incompetence or gross negligence in carrying out usual certified or licensed
18 nursing functions.

19 8. Section 125.3 of the Code provides, in pertinent part, that the Board of
20 Registered Nursing may request the administrative law judge to direct a licentiate found to have
21 committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable
22 costs of the investigation and enforcement of the case.

23 **DRUGS**

24 9. "**Tissue Plasminogen Activator (tPA)**" - is an enzyme that helps dissolve
25 clots. It is a systemic thrombolytic (clot-busting) agent and is used in the treatment of heart
26 attack and stroke. It is a dangerous drug pursuant to Section 4022 of the Business and
27 Professions Code.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence)

3 10. On December 24, 2004, while employed as a registered nurse, and serving
4 as Acting Charge Nurse, in the Emergency Department at the Kaiser Permanente Medical Center,
5 in Santa Clara, California, respondent was grossly negligent and/or incompetent in providing
6 nursing care to a stroke patient, who died two days later. Included within said conduct is that
7 respondent overmedicated the patient, failed to notify the patient's physician or the primary nurse
8 of deteriorating changes in the patient's condition following the overmedication, and failed to
9 document in the patient's medical record the additional amount of medication the patient
10 received. The circumstances are hereinafter set forth. On the occasion in question, respondent
11 overmedicated a patient being treated in the Emergency Room for an acute stroke with a tPA
12 infusion. The physician's order was for the patient to receive 67.5 mg of tPA, which included a
13 6.75 mg bolus over one minute, followed by a drip of 60.75 mg over fifty-nine minutes. The
14 primary nurse set the intravenous pump to stop and alarm when the 60.75 mg of tPA was infused.
15 When the alarm sounded, respondent inappropriately responded to the alarm by re-starting the
16 pump, and thereby increasing the amount of medication to be infused by approximately 32.5 mg
17 (the amount remaining in the bottle), without receiving a report on the patient, reviewing the
18 physician's order, or checking with the primary nurse. Immediately after the infusion was
19 completed, respondent admitted that she suspected that she had overmedicated the patient,
20 however, she failed to notify the physician or the primary nurse. Respondent failed to document
21 in the medical record, the additional amount of medication that the patient received. Respondent
22 observed neurological changes and deterioration in the patient, however, she failed to recognize
23 the emergent nature of said changes, and failed to notify the physician or the primary nurse, or
24 appropriately document her observations. The patient died on December 26, 2004. The cause of
25 death was listed as, "Intracranial bleed due to Ischemic Stroke due to hypertension."

26 11. The conduct of respondent, as set forth in paragraph 10 above, constitutes
27 gross negligence and provides grounds for disciplinary action under Code section 2761(a)(1).

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